

BEFORE THE DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and )  
Petition to Revoke Probation Against: )

NO. D-2756  
L-24617

LARRY LEE BOSLEY, M.D. )  
Certificate No. C-23493, )  
Respondent. )

NOTICE OF NON-ADOPTION  
OF PROPOSED DECISION

TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality did not adopt the proposed decision in this case. The Division will now decide the case itself upon the record, including the transcript.

You are now afforded the opportunity to present both oral and written argument to the Division. If you want to make oral argument, you must file with the Division within 20 days from the date of this notice your written request for oral argument. Otherwise, this option shall be deemed waived. If any written request is timely received, all parties will then be notified in writing of the date, time and place for hearing oral arguments from both sides.

As to written argument, you will be notified in writing of the deadline date to file your written argument with the Division. Your right to argue on any matter is not limited, but the Division would be interested in persuasive discussions on the following matters: Why the penalty should not be increased.

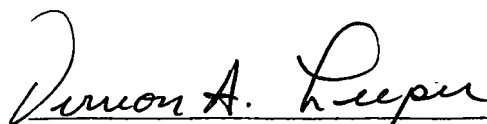
For its own use, the Division has ordered the preparation of the hearing transcript and records. At your own expense, you may order a copy of the same by personally contacting the transcript clerk at the Office of Administrative Hearings at: 314 West First Street, Los Angeles, CA 90012.

Please remember to include your proof of service that the opposing attorney was served with a copy of your written argument to the Division. The address for mailing or serving your request for oral argument and your written argument to the Division is as follows:

Division of Medical Quality  
1430 Howe Avenue  
Sacramento, CA 95825

DATED: June 22, 1982

DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE

  
VERNON A. LEEPER, Program Manager  
Enforcement Unit

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DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and )  
Petition to Revoke Probation Against: )

LARRY LEE BOSLEY, M.D. )

8447 Wilshire Boulevard, Suite 400 )  
Beverly Hills, California 90211 )

CASE NO. D-2756

Physician's and Surgeon's )  
Certificate No. C-23493, )

L-24617

Respondent. )  
)

PROPOSED DECISION

This matter came on regularly for hearing before Robert A. Neher, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on March 15 and 16, 1982, at 9:00 a.m. William L. Carter and Russell W. Lee, Deputy Attorneys General, represented the complainant. Respondent appeared in person and was represented by Henry Lewin, Marcus E. Crahan, Jr., and Ann R. Lewin, Attorneys at Law. Documentary evidence and evidence by way of stipulation was introduced and the matter submitted. The Administrative Law Judge finds the following facts:

I

Robert G. Rowland made the Accusation and Petition to Revoke Probation in his official capacity as Executive Officer of the Board of Medical Quality Assurance.

II

On or about October 16, 1961, the Board of Medical Examiners of the State of California (predecessor to the Board) issued to Larry Lee Bosley, M.D., physician's and surgeon's certificate number C-23493. Said certificate is now, and was at all times mentioned herein, in full force and effect except as set forth hereinbelow:

Effective January 14, 1980, in case number D-2369, respondent's certificate was suspended for a period of one (1) year with suspension stayed and respondent placed upon probation, under various terms and conditions, for a period of three (3) years. Attached to the Accusation as "Exhibit A" and incorporated therein by reference as though set forth at length is a true and correct copy of the Board's decision and the Accusation in said case number D-2369. As a specific term and condition of said probationary disciplinary decision, set out at paragraph 8, subparagraph G, on page 5 of the stipulation with respect thereto, respondent agreed to comply with the terms, conditions, and spirit of the stipulated judgment for permanent injunction, civil penalties and costs entered into by respondent and complainant Board in Los Angeles Superior Court case number C308656. Attached to the Accusation as "Exhibit B" and incorporated therein by reference as though set forth at length is a true and correct copy of the complaint for injunction and civil penalties and the judgement for permanent injunction, civil penalties and reimbursement of expenses of investigation in said civil case number C308656.

### III

During the period of time from approximately September of 1974, through and including the present, respondent has practiced medicine as director, chief executive officer (president), and chief financial officer of the Bosley Medical Group, a Medical Corporation, a plastic surgery clinic located at 8447 Wilshire Boulevard, Suite 400, Beverly Hills, California.

### IV

On or about, but not limited to the occasion of August 31, 1980, at or about 2:30 p.m., respondent caused and/or allowed one Barbara Richards, R.N., to administer subcutaneous local anesthesia (lidocaine and/or xylocaine) to the scalp of a hair transplant patient at the clinic.

### V

The above procedures performed by Richards were and are medical procedures the performance of which Richards was not authorized by her registered nursing license to perform. The parties agree that the above procedures could have been performed by Richards, pursuant to an approved standard procedure under Business and Professions Code Section 2725, and will be so accomplished in the future; however, at the time no such standard procedure had been approved.

VI

The conduct set forth in Findings III through V violates the conditions of respondent's probation.

VII

During the period of probation, respondent, in newspaper advertisements, periodicals and brochures and pamphlets sent out from the clinic to prospective patients, a representative portion of which are attached to the Accusation as "Exhibits C, D, E, and F" and incorporated therein by reference as though set forth at length, made the following representations:

A. The photograph likeness of one Ed Chavira appearing in said advertisements represents an example of what successful hair transplantation can achieve (Exh. C, pp. 11 & 17).

In truth and in fact, Chavira's transplants were all located in the crown area at the back of the scalp and are not obviously apparent in said photographs;

B. Vigorous exercise may be engaged in within ten (10) days after a hair transplant operation (Exh. C, p. 11).

In truth and in fact, such vigorous exercise is not always advisable, may be contraindicated and, at least, may not be advisable for two or more weeks after a transplant operation.

C. A full head of hair is attainable in two to four months (Exh. C, p. 15: "The 'after' photo of me was taken two months after my last procedure and Dr. Bosley says I can expect 50 percent more hair growth in a couple of months"; p. 16: "Four months after my hair transplant procedures I started getting comments on how good I looked with my own hair"; p. 17: "The surgery went smoothly and my transplants grew out in three months with no complications. Now I have a full head of hair and I feel great.")

The statements referenced hereinabove on pages 15, 16, and 17 of Exhibit C, attributed to Al Stankiewicz, Stan MacDoneil and Ed Chavira, together with the pictures set out therewith were distributed by respondent at times during the period of his probation.

D. "Like Dr. Bosley, all of the Clinic staff of experienced, qualified physicians are certified by the Boards of their respective specialties" (Exh. D, p. 3) and "together these four Bosley Medical Group surgeons represent more than 60 years of service in the field of cosmetic/plastic surgery for personal enhancement" (Exh. B, p. 2).

In truth and in fact, not all of the clinic staff are certified plastic surgeons.

E. With respect to hair transplantation operations "/a/s for any discomfort, there is virtually none" (Exh. D, p. 23). That is, the procedure is virtually "pain-free" (Exh. C, p. 9).

In truth and in fact, hair transplantation may involve pain and discomfort in some cases.

F. Plastic surgery is virtually risk free in that complications "are rare" and serious complications are "extremely unlikely" and "/n/o major blood vessels, nerves or vital organs are involved" (Exh. D, p. 4).

In truth and in fact, any surgery, especially involving local and general anesthesia, may potentially affect the blood vessels, nerves, and vital organs.

G. Plastic surgery involves "no pain during surgery" and discomfort following the procedure "is usually minimal and readily controlled with mild analgesics" (Exh. D, p. 4).

In truth and in fact, any surgery, especially involving local and general anesthesia, involves the potential of severe pain, both during and after surgery, and such pain sometimes may not be "readily controlled with mild analgesics."

H. That, in the context of "before" and "after" photographic advertisements (Exhs. E & F), respondent and the clinic are responsible for a "medical breakthrough" developed by the clinic in reducing baldness.

In truth and in fact, the relevant medical literature in the field of plastic surgery attributes no "medical breakthrough/s/ to respondent or his medical group.

#### IX

The representations in respondent's advertising, and each of them hereinabove set forth, are misleading and have a tendency to deceive the public and impose upon credulous or ignorant persons. Respondent knew, or in the exercise of reasonable care should have known, that said representations were misleading and were likely to create false or unjustified expectations of favorable results in the mind of the public.

#### X

Each of said misleading statements in respondent's advertisements constitutes a violation of the probationary order in Board Case No. D-2369.

XI

Respondent in or about December of 1981, ceased performing plastic surgery in his medical group, except for hair transplantation, scalp reduction surgery, and the minor dermatological procedures of removing cysts, moles, warts and skin lesions. Respondent does not intend in the future to perform plastic surgery in his medical group, except as set forth above.

XII

The parties stipulated and agreed that respondent is presently challenging the validity of Business and Professions Code Section 651(h), as it relates to professional advertising, in the court system.

XIII

The defenses, and each of them, set forth in respondent's Special Notice of Defense were not established by the evidence.

XIV

Except as hereinabove found to be true, all other factual allegations in the Accusation and Petition to Revoke Probation are found to be unproved, or were dismissed by the complainant.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists to suspend or revoke respondent's license pursuant to Business and Professions Code Sections 2220, 2234, and 2227 in that he has committed acts constituting unprofessional conduct as follows:

1. By violation of Section 2264, in conjunction with Section 2052, of said Code, by reason of Findings III through V; however, said violation is technical in nature and has been and will continue to be obviated by an approved standard procedure.

2. By violations of Sections 2271, 651 and 17500 of said Code, by reason of Finding VIII-A through VIII-H, and each of them, in conjunction with Finding IX.

II

Cause exists to revoke respondent's probation in Case No. D-2369, in that he violated the terms and conditions of said probation, by reason of his conduct set forth in Findings III through IX.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

The Physician's and Surgeon's Certificate No. C-23493, heretofore issued to the respondent, Larry Lee Bosley, M.D., is hereby suspended for a period of one (1) year; provided, however, said suspension is hereby stayed and respondent is placed on probation for a period of three (3) years from and after the effective date of the Decision in this case, upon the following terms and conditions:

1. Respondent shall comply with all laws of the United States, the State of California and its political subdivisions, and all rules and regulations of the Board of Medical Quality Assurance of the State of California.

2. Respondent shall report in person to the Division of Medical Quality or its agents or medical consultants at such meetings or interviews as may be directed during the period of probation.

3. Respondent shall submit to the Division of Medical Quality, at quarterly intervals, a declaration under penalty of perjury on forms provided by the Division, to the effect that he is fully and faithfully complying with all the terms and conditions of this probation. The first report shall be due when ordered by the Executive Director.

4. Respondent shall comply with the Division's probation surveillance program. In connection therewith, respondent shall make himself and/or any facility over which he has cognizance available for inspection by authorized representatives of the Division at any time for the purpose of verifying respondent's compliance with the terms of his probation.

5. In the event respondent should leave California to reside or to practice outside the State, respondent shall immediately notify the Division, in writing, of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

6. In the event respondent uses photographs in advertisements or literature, they shall be true and accurate representations of what they purport to reflect; and whenever "before and after" photos are utilized, respondent shall use substantially the same source of lighting, camera, film, film speed, exposure, background, pose (including facial expression), jaw position, hair style, and angle of view.

7. The following warnings shall be prominently placed where photos are used in any advertisement or literature provided to potential patients:

- (a) For scalp reduction photos: "Even though it may not be clearly evident in the photographs, there is a single mid-line scar left after the scalp reduction procedure."
- (b) For hair transplantation photos: "The accuracy of these photos is limited to some extent by the photographic reproduction process used."
- (c) For all photos: "The original photographs, from which these photos were reproduced, are available for examination at the Medical Group during normal business hours."

8. Whenever the following assertions are made in any advertisement or literature provided to potential patients, the following warnings shall be inserted immediately after the assertion, and with equal dignity:

- (a) Where assertions are made regarding lack of pain: "However, in occasional cases, the administration of local anesthetic for hair transplantation may involve pain and discomfort. Such procedures might require treatment for pain with mild analgesics and/or injections of local anesthetics post-operatively for some period of time."
- (b) Whenever assertions are made regarding exercise after surgery: "However, vigorous exercise may not always be advisable for a period of two weeks after transplant surgery, and longer if such exercise will result in excessive bleeding."
- (c) Whenever assertions are made regarding bleeding, or lack thereof: "In rare cases, bleeding may occur from the recipient or donor area for as much as two weeks, or in extremely rare cases, more than two weeks, after transplant surgery."



- (d) Whenever assertions are made regarding how long good results take: "Good results from hair transplant surgery generally involve several transplant procedures. Such results usually are first apparent approximately three or four months after the final procedure, but in some cases may require a year or more."

9. Respondent shall make changes in his advertising copy and literature, to conform with this order, at the earliest possible date.

10. Respondent's registered nurse employees shall not administer subcutaneous local anesthesia to the scalp of any hair transplant patient except as authorized by an approved standard procedure in conformance with Business and Professions Code Section 2725.

11. Except as amplified by this order, respondent shall continue to comply with the terms, conditions and spirit of the stipulations re: Entry of Judgment for Permanent Injunction; Civil Penalties; and Reimbursement of Expenses of Investigation entered into by respondent and the Board of Medical Quality Assurance in *People, et al. v. Bosley, et al.*, Los Angeles Superior Court Case No. C308656.

12. During the period of this probation, respondent shall not perform or practice plastic surgery in his medical group or individually, except for hair transplantation, scalp reduction surgery, and the minor dermatological procedures of removing cysts, moles, warts, and skin lesions.

13. The period of probation notwithstanding, and even upon full completion of probation, respondent, in his medical group or individually, agrees that he shall not perform or practice plastic surgery, except as set forth in Condition 12 hereof, without prior written approval of the Division of Medical Quality.

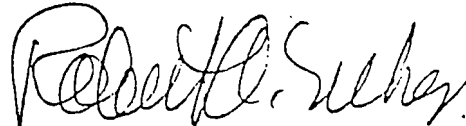
Upon full compliance with the terms and conditions herein set forth and upon the expiration of the probationary period, the certificate shall be restored to its full privileges except as required by Condition 13, above, provided, however, that in the event respondent violates or fails to comply with any of the terms and conditions hereof, the Board of Medical Quality Assurance, after notice to respondent and opportunity to be heard, may terminate this probation and reinstitute the suspension or make such other order modifying the terms of probation herein as it deems just and reasonable in its discretion.

II

The probation imposed on said respondent pursuant to the Board's Order in Case No. D-2369 is hereby terminated; the order therein staying suspension is repealed; and the one (1) year suspension previous stayed is reimposed. Said suspension shall run concurrently with the suspension set forth in paragraph I of this Order; provided, however, that said suspension is also stayed, and respondent is placed on probation for a period of three (3) years concurrently with the probation set forth in paragraph I hereof, and subject to each and all of the same terms and conditions set forth therein.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates, at Los Angeles, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.

DATED: 31 MARCH



ROBERT A. NEHER  
Administrative Law Judge  
Office of Administrative Hearings

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